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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

8 WILLIE WILLIAMS,

9 Petitioner

10 v.

11 BRIAN WILLIAMS, *et al.*,

12 Respondents.

Case No.: 2:23-cv-01090-GMN-DJA

**Order Denying Application to Proceed  
In Forma Pauperis, Directing Service  
of Petition, and Denying Motion for  
Appointment of Counsel**

13 Willie Williams has submitted a *pro se* petition for a writ of habeas corpus  
14 pursuant to 28 U.S.C. § 2254 challenging his second-degree murder conviction in the  
15 Eighth Judicial District Court (Clark County). (ECF No. 1-1.) He has paid the filing fee;  
16 therefore, his application to proceed *in forma pauperis* is denied as moot. (ECF No. 1.)  
17 The court has conducted a preliminary review of the petition under Rule 4 of the Rules  
18 Governing Section 2254 Cases in the United States District Courts and directs that it be  
19 served on respondents.

20 A petition for federal habeas corpus should include all claims for relief of which  
21 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be  
22 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.  
23 §2244(b) (successive petitions). If petitioner is aware of any claim not included in his

1 petition, he should notify the court of that as soon as possible, perhaps by means of a  
2 motion to amend his petition to add the claim.

3 Williams has also submitted a motion for appointment of counsel. (ECF No. 1-2.)  
4 There is no constitutional right to appointed counsel in a federal habeas corpus  
5 proceeding. *Luna v. Kernan*, 784 F.3d 640, 642 (9<sup>th</sup> Cir. 2015) (citing *Lawrence v.*  
6 *Florida*, 549 U.S. 327, 336–37 (2007)). An indigent petitioner may request appointed  
7 counsel to pursue habeas relief. 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint  
8 counsel is generally discretionary. *Id.* § 3006A(a)(2) (authorizing appointment of counsel  
9 “when the interests of justice so require”). However, counsel is appropriate if the  
10 complexities of the case are such that denial of counsel would amount to a denial of due  
11 process, and where the petitioner is so uneducated that he is incapable of fairly  
12 presenting his claims. *LaMere v. Risley*, 827 F.2d 622, 626 (9<sup>th</sup> Cir. 1987); *Brown v.*  
13 *United States*, 623 F.2d 54, 61 (9<sup>th</sup> Cir. 1980). Here, Williams sets forth five claims of  
14 ineffective assistance of counsel and one claim under *Brady v. Maryland*, 373 U.S. 83  
15 (1963). The petition presents his claim in a reasonably clear manner, and the legal  
16 issues do not appear to be particularly complex. Therefore, the court denies the motion.

17 IT IS THEREFORE ORDERED that petitioner’s application to proceed *in forma*  
18 *pauperis* (ECF No. 1) is **DENIED** as moot.

19 IT IS FURTHER ORDERED that the Clerk of Court detach, file, and electronically  
20 SERVE the petition (ECF No. 1-1,) on respondents.

21 IT IS FURTHER ORDERED that the Clerk **add** Aaron D. Ford, Nevada Attorney  
22 General, as counsel for respondents and provide respondents an electronic copy of all  
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1 items previously filed in this case by regenerating the Notice of Electronic Filing to the  
2 office of the AG only.

3 IT IS FURTHER ORDERED that the Clerk detach and file petitioner's motion for  
4 appointment of counsel (ECF No. 1-2).

5 IT IS FURTHER ORDERED that the motion for counsel is **DENIED**.

6 IT IS FURTHER ORDERED that respondents file a response to the petition,  
7 including potentially by motion to dismiss, within **90 days** of service of the petition, with  
8 any requests for relief by petitioner by motion otherwise being subject to the normal  
9 briefing schedule under the local rules. Any response filed is to comply with the  
10 remaining provisions below, which are entered pursuant to Habeas Rule 5.

11 IT IS FURTHER ORDERED that any procedural defenses raised by respondents  
12 in this case be raised together in a single consolidated motion to dismiss. In other  
13 words, the court does not wish to address any procedural defenses raised herein either  
14 in seriatum fashion in multiple successive motions to dismiss or embedded in the  
15 answer. Procedural defenses omitted from such motion to dismiss will be subject to  
16 potential waiver. Respondents should not file a response in this case that consolidates  
17 their procedural defenses, if any, with their response on the merits, except pursuant to  
18 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If  
19 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will  
20 do so within the single motion to dismiss not in the answer; and (b) they will specifically  
21 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in  
22 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9<sup>th</sup> Cir. 2005). In short, no procedural  
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1 defenses, including exhaustion, should be included with the merits in an answer. All  
2 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

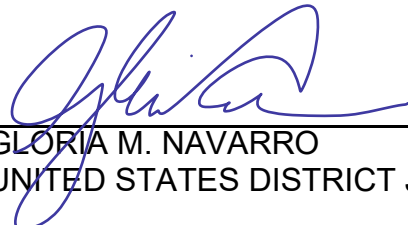
3 IT IS FURTHER ORDERED that, in any answer filed on the merits, respondents  
4 specifically cite to and address the applicable state court written decision and state  
5 court record materials, if any, regarding each claim within the response as to that claim.

6 IT IS FURTHER ORDERED that petitioner has **45 days** from service of the  
7 answer, motion to dismiss, or other response to file a reply or opposition, with any other  
8 requests for relief by respondents by motion otherwise being subject to the normal  
9 briefing schedule under the local rules.

10 IT IS FURTHER ORDERED that any additional state court record exhibits filed  
11 herein by either petitioner or respondents be filed with a separate index of exhibits  
12 identifying the exhibits by number. The parties will identify filed CM/ECF attachments by  
13 the number of the exhibit in the attachment. Each exhibit must be filed as a separate  
14 attachment.

15 IT IS FURTHER ORDERED that, at this time, the parties send courtesy copies of  
16 **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY** to the  
17 Reno Division of this court. Courtesy copies shall be mailed to the Clerk of Court, 400  
18 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the  
19 outside of the mailing address label. **No further courtesy copies are required unless**  
20 **and until requested by the court.**

21 DATED: 16 August 2023.

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GLORIA M. NAVARRO  
UNITED STATES DISTRICT JUDGE